

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

Illinois Commerce Commission	)	
On Its Own Motion	)	
	)	Docket No. 06-0187
Grant Awards From Digital Divide	)	
Elimination Infrastructure Fund	)	

**VERIZON AVENUE CORPORATION’S PROCESS COMMENTS**

Pursuant to the schedule set by the Administrative Law Judge (“ALJ”) at the April 12, 2006 Status Hearing (“Status”), Verizon Avenue Corporation (“Verizon”), by and through its attorneys, hereby submits its recommendations on the appropriate scope and nature of this proceeding as follows:

**I. Parties’ Proper Roles in Proceeding**

The parties to this proceeding are diverse – applicants that Staff has recommended receive grants from the state’s Digital Divide Elimination Infrastructure Fund (“DDEIF”) (“Funded Applicants”), applicants that Staff has recommended *not* receive grants from the DDEIF (“Unfunded Applicants”), intervenor non-applicants with an interest in the administration of the DDEIF and the precedent that may be set here for future DDEIF grant proceedings, and even government officials with an interest in promoting expeditious broadband deployment in underserved areas of Illinois. As became clear at the Status, there is wide disagreement among the parties on the proper roles of each in this proceeding. Because Verizon is an Unfunded Applicant, it limits its comments to the appropriate role of Unfunded Applicants.

Verizon does not believe that any party disputes the premise that Unfunded Applicants should be entitled to respond to the recommended denial of their DDEIF applications as set forth in the Illinois Commerce Commission's ("Commission") March 28, 2006 Telecommunications Division Staff Report ("Staff Report").<sup>1</sup> Rather, the dispute centers on which record information the Unfunded Applicants may incorporate in their responses, and whether Unfunded Applicants may address the Staff Report's recommendations regarding applications other than their own, both funded and unfunded.

Verizon submits that due process requires that Unfunded Applicants be permitted to cite any and all record material in their responses to the Staff Report, including (1) the portions of the Staff Report that relate to other applicants, and (2) the underlying DDEIF grant applications (which were made part of the record by the ALJ's March 20, 2006 order in this proceeding). It would be highly inappropriate to prohibit Unfunded Applicants from discussing these portions of the evidentiary record, because it would impede their ability to assess whether Staff appropriately applied the criteria set forth in 83 Ill. Admin. Code. §§ 759.230 and 759.320 (and in 220 ILCS 5/13-301.3(b)), not only to the Unfunded Applicant's application, but consistently as to all applications.

Assume hypothetically that Staff applied a particular criterion in one manner as to one applicant, but differently as to another, and that one applicant was funded while the other was not. Such inconsistencies would be directly relevant to assessing the validity of the recommendations set forth in the Staff Report, but could only be established by reviewing and

---

<sup>1</sup> The precise form of such response (*e.g.*, comments, briefs, testimony) will be determined at a later date. The ALJ indicated at the Status that he would convene another status hearing approximately two weeks after the entry of a

discussing the record in its entirety. Without being permitted to make use of the entire record, the parties would be unfairly foreclosed from making such arguments, violating their right to due process.

Moreover, 83 Ill. Admin. Code. §§ 759.230 and 759.320 and 220 ILCS 5/13-301.3 mandate that the Commission consider certain criteria in reviewing proposals and awarding DDEIF grants. There is no basis to conclude that these authorities require (or even permit) the Commission to limit its consideration of those criteria to merely those facts self-reported by the applicants. The Commission should strive to consider and evaluate the mandatory criteria to the fullest extent possible by considering not only information from the *applicants*, but also facts presented by *other parties* with evidence relevant to the Commission's evaluation of a particular application.

The Commission should therefore authorize Unfunded Applicants to cite any and all record material in their responses to the Staff Report, including the portions of the Staff Report that relate to other applicants, and the underlying DDEIF grant applications. The Commission should do so without regard to whether the Unfunded Applicant's citation to such material is part of its discussion of the recommended denial of its own application, or its analysis of the recommended grant or denial of another party's application. The Commission must recognize that the DDEIF contains a finite sum of money. If the Commission ultimately disagrees with a Staff recommendation for the funding of a certain applicant, a presently Unfunded Applicant could become a Funded Applicant after review and consideration of all pertinent evidence.

---

protective order in this proceeding to address procedural issues with the benefit of the parties' process comments and their review of the confidential record in this docket.

For all of these reasons, Verizon recommends that Unfunded Applicants be permitted to use the record evidence to the fullest extent desired in their responses to the Staff Report, not only in addressing the Staff Report's findings regarding their own applications, but also for the purpose of discussing the Staff's recommendations on other applicants' DDEIF grant proposals.

## **II. Nature and Scope of Proceeding**

In addition to comments on the parties' proper roles in this proceeding, the ALJ requested input from the parties on the appropriate nature and scope of this proceeding. The ALJ noted the need to balance the competing goals of conducting an expeditious, streamlined and low-cost proceeding with affording appropriate due process to the parties. A major question arose at the Status regarding whether to conduct a hearing (and if so, whether the hearing should be "live" or "on paper").

The DDEIF Request for Grant Proposals ("RGP") explicitly stated that the Commission "shall review Applicant's grant proposal ... by establishing a docketed proceeding that uses a hearing process to evaluate [the] application," at which hearing the "Applicant must be prepared to provide additional evidence, including expert testimony, to the Commission of Applicant's eligibility and worthiness to receive an award." (RGP at 6). Thus, there can be no question that some form of hearing is not only appropriate, but required by the RGP's express terms. Indeed, the RGP states that the Commission "shall" make its determinations "[b]ased upon the record developed in the hearing process." (*Id.*). Rather, the proper inquiry is whether a live hearing with cross-examination is necessary, or whether a "paper hearing" under 83 Ill. Admin. Code § 200.525 may suffice.

Provided that parties are permitted to make use of the *complete* record in their responses,

and are authorized to present facts and analysis relating to *all* applications addressed in the Staff Report, Verizon submits that the Commission can strike an appropriate balance of interests by conducting a “paper hearing” under 83 Ill. Admin. Code § 200.525. Verizon would consent to such a process. Absent full use of the record and authority to address the entirety of the Staff Report, however, foreclosing parties from the opportunity to cross-examine live witnesses at hearing would deprive parties of due process, because there would be no other way for them to introduce all relevant evidence.

Verizon proposes a single-round, verified comment process that would allow parties to submit factual testimony supported by affidavit in conjunction with their comments on the Staff Report, if they chose. Parties would be permitted to address all aspects of the Staff Report, using all portions of the record. Following the issuance of the ALJ’s proposed order, the parties would have the opportunity to file a single round of briefs on exceptions. Verizon does not offer a specific proposed schedule, but notes for discussion purposes that although Staff had proposed the submission of comments two weeks after the distribution of the unredacted Staff Report and underlying DDEIF grant applications, that was before certain parties raised objections to the commenting parties being permitted to address *all* portions of the Staff Report. As Verizon stated on the record at the Status, this scope issue needs to be resolved before the parties file comments, because it will directly affect the scope and content of those comments. Verizon therefore submits that the filing date for comments should be the later of two weeks after the issuance of an order on the scope of the parties’ comments, or two weeks after the distribution of the unredacted Staff Report and underlying DDEIF grant applications.

Finally, Staff and several parties suggested that certain applicants could be “severed”

from this proceeding if no party challenges the Staff Report's recommendations as to those parties. Verizon has no objection to this approach.

### **III. Standard for Challenging Recommendations in the Staff Report**

The ALJ solicited comment on the standard that should govern parties' attempts to challenge or defeat the recommendations in the Staff Report. It is critical to recognize that the decision-maker in this proceeding is the Commission itself, not its Staff.<sup>2</sup> The Staff Report is merely a set of preliminary recommendations made after accepting the applicants' allegations at face value. Critically, the Staff Report is not a set of evidentiary findings made after the development of the full record in this proceeding. Therefore, no "standard of review" applies to the Staff Report, nor should it be treated as presumptively authoritative.

Verizon submits that if a party establishes that Staff has either incorrectly applied the governing criteria in making its recommendations, or that the factual basis underlying Staff's evaluation and application of those criteria is erroneous, the Commission should decline to make findings consistent with that particular Staff recommendation.

---

<sup>2</sup> 83 Ill. Admin. Code. Part 759 and 220 ILCS 5/13-301.3 require the Commission itself to administer the DDEIF grant process (including the consideration of the applicable criteria for awarding DDEIF grants), not the Commission's Staff. While the Commission certainly can and should consider the Staff report as part of this process, ultimately, the Commission must reach its own conclusions based on the record that is developed in this proceeding, rather than rely presumptively on Staff recommendations made at its outset.

Dated: April 19, 2006

Respectfully submitted,

**Verizon Avenue Corporation**

By:



John E. Rooney  
Sonnenschein Nath & Rosenthal  
233 South Wacker Drive  
Chicago, Illinois 60606  
(312) 876-8000  
[jrooney@sonnenschein.com](mailto:jrooney@sonnenschein.com)

A. Randall Vogelzang  
Verizon  
600 Hidden Ridge  
Irving, Texas 75038  
(972) 718-2170  
[randy.vogelzang@verizon.com](mailto:randy.vogelzang@verizon.com)

Deborah Kuhn  
Verizon  
205 North Michigan Avenue, 11<sup>th</sup> Floor  
Chicago, Illinois 60601  
(312) 260-3326  
[deborah.kuhn@verizon.com](mailto:deborah.kuhn@verizon.com)

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

Illinois Commerce Commission	)	
On Its Own Motion	)	
	)	Docket No. 06-0187
Grant Awards From Digital Divide	)	
Elimination Infrastructure Fund	)	

**NOTICE OF FILING**

Please take notice that on April 19, 2006, I caused "Verizon Avenue Corporation's Process Comments" in the above-captioned matter to be filed electronically with the Illinois Commerce Commission via its E-Docket system.

  
\_\_\_\_\_  
Deborah Kuhn

**CERTIFICATE OF SERVICE**

I, Deborah Kuhn, certify that I caused "Verizon Avenue Corporation's Process Comments," together with a Notice of Filing, to be served upon all parties on the attached service list on this 19<sup>th</sup> day of April, 2006, by electronic mail.

  
\_\_\_\_\_  
Deborah Kuhn



DOCKET NO. 06-0187  
SERVICE LIST

Thomas Aridas  
Administrative Law Judge  
Illinois Commerce Commission  
160 N. LaSalle  
Ste. C-800  
Chicago, IL 60601  
[taridas@icc.illinois.gov](mailto:taridas@icc.illinois.gov)

Douglas A. Dougherty  
Illinois Telecommunications Assoc., Inc.  
300 E. Monroe St.  
Ste. 306  
P.O. Box 730  
Springfield, IL 62705  
[ddougherty@ameritech.net](mailto:ddougherty@ameritech.net)

Dennis K. Muncy  
Atty. For Egyptian Internet Services, Inc.  
Meyer Capel, a Professional Corporation  
306 W. Church St.  
P.O. Box 6750  
Champaign, IL 61826-6750  
[dmuncy@meyercapel.com](mailto:dmuncy@meyercapel.com)

Peter Wagner  
Case Manager  
Illinois Commerce Commission  
527 E. Capitol Avenue  
Springfield, IL 62701  
[pwagner@icc.illinois.gov](mailto:pwagner@icc.illinois.gov)

Brandy Bush Brown  
Office of General Counsel  
Illinois Commerce Commission  
160 N. LaSalle  
Ste. C-800  
Chicago, IL 60601  
[bbrown@icc.illinois.gov](mailto:bbrown@icc.illinois.gov)

Matthew L. Harvey  
Office of General Counsel  
Illinois Commerce Commission  
160 N. LaSalle  
Ste. C-800  
Chicago, IL 60601  
[mharvey@icc.illinois.gov](mailto:mharvey@icc.illinois.gov)

Joseph D. Murphy  
Atty. For Egyptian Internet Services, Inc.  
Meyer Capel, a Professional Corporation  
306 W. Church St.  
P.O. Box 6750  
Champaign, IL 61826-6750  
[jmurphy@meyercapel.com](mailto:jmurphy@meyercapel.com)

Ken Alberts  
Director of Utilities  
Rochelle Municipal Utilities  
Northern Illinois Technology Triangle  
(NITT)  
333 Lincoln Way  
P.O. Box 456  
Rochelle, IL 61068  
[kalberts@mu.net](mailto:kalberts@mu.net)

Jason Bird  
Superintendent of Electric  
City of Princeton  
Two S. Main Street  
Princeton, IL 61356-1708  
[jbird@princeton-il.com](mailto:jbird@princeton-il.com)

Benjamin Clark  
Project Manager  
Verizon Avenue  
12901 Worldgate Dr.  
Herndon, VA 20170-6012  
[ben.clark@verizon.com](mailto:ben.clark@verizon.com)

Barry Goodwin  
Manager  
USA Broadband-El, LLC  
607 S. State St.  
Jerseyville, IL 62052-2366  
[barry@noww.us](mailto:barry@noww.us)

Karen Jackson-Furman  
Director of Finance  
Egyptian Internet Services, Inc.  
1010 W. Broadway  
P.O. Box 158  
Steeleville, IL 62288-1312  
[kfurman@egyptian.net](mailto:kfurman@egyptian.net)

Ray Cagle  
Chief Operating Officer  
Delta Communications, LLC  
d/b/a Clearwave Communications  
2 N. Vine Street  
Hamsburg, IL 62946-1561  
[rcagle@clearwave.com](mailto:rcagle@clearwave.com)

Bruce Giffin  
General Manager  
Illinois Rural Electric Cooperative  
P.O. Box 80  
Winchester, IL 62694  
[giffin@e-co-op.com](mailto:giffin@e-co-op.com)

William Harris  
Electrical Commissioner  
City of Sullivan  
2 W. Harrison  
Sullivan, IL 61951  
[wharris@sullivanil.us](mailto:wharris@sullivanil.us)

Paul Jakubczak  
Electrical Director  
City of Rock Falls  
1109 Industrial Park Road  
Rock Falls, IL 61071  
[pjakubczak@rockfalls61071.com](mailto:pjakubczak@rockfalls61071.com)

W. James Lally  
Chief Financial Advisor  
ROC-Net Holdings, LLC  
605 Fulton Avenue  
Rockford, IL 61103  
[jlally@eigerlab.org](mailto:jlally@eigerlab.org)

Ben Moore  
Owner  
Yamaha of Southern Illinois  
3008 S. Park Avenue  
Herrin, IL 62948-3721  
[benmoore@yamahaofsi.com](mailto:benmoore@yamahaofsi.com)

Raymond Sinclair  
President  
Sincsurf, Inc.  
1665 S. State St.  
Jerseyville, IL 62052-3609  
[ray@sincsurf.net](mailto:ray@sincsurf.net)

Robert L. Stivers  
Chief Financial Officer  
Aero Communications, LLC  
Heartland Communications Internet  
Services, Inc.  
1301 Broadway  
Ste. 101  
Paducah, KY 42001  
[rstivers@hcis.net](mailto:rstivers@hcis.net)

Philip J. Wood, Jr.  
Vice President  
Public Affairs Policy & Communications  
Verizon  
1312 E. Empire Street, ILLARA  
P.O. Box 2955  
Bloomington, IL 61702  
[philip.j.wood.jr@verizon.com](mailto:philip.j.wood.jr@verizon.com)

Donald L. Woods  
Atty. for Illinois Telecommunications  
Assoc.  
2033 Lindsay Road  
Springfield, IL 62704  
[ifimhome@aol.com](mailto:ifimhome@aol.com)

Dori Crow  
Office Manager  
Mt. Vernon Net, Inc.  
#1 Doctor's Park  
Ste. H1  
Mt. Vernon, IL 62864  
[dori@mvn.net](mailto:dori@mvn.net)